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F.O. 881/7610

Printed for the use of the Foreign Office. *October* 4, 1901.

CONFIDENTIAL.

(7610.)

Memorandum on the Case of A. W. Haggberg, a Swedish Subject.

Claim.

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Ten months' wrongful detention as prisoner of war, at 30*l.*	300
Deprivation of liberty	500
	800

ARRESTED by British pickets at Lydenburg on the 19th September, 1900, and kept in custody until the 20th July, 1901.

Häggberg had been in Transvaal since November 1892, and worked as carpenter and amalgamator in Witwatersrand district until October 1899; then did special police duty at Fordsburg in November and December 1899; then in mines (?) under Goerz and Co., as amalgamator; then in April 1900, in Haenertsburg, in the Zoutspansberg, at mines belonging to Eastern Star Syndicate: then went with J. C. McLaren, one of Syndicate, to Lydenburg, where he was captured.

This is a question of the rights and duties of alien neutrals in belligerent country.

The *primâ facie* case of the British military authorities is—

1. That he was a burgher of the Transvaal; and

2. That he surrendered voluntarily.

It has not been proved that he was a burgher, and he appears to [have walked into the hands of the British picket, which properly arrested and detained him.

His subsequent detention may be justified, but not by the reasons assigned. It depends on the question whether he had acquired the status of an enemy subject.

He had been eight years in the Transvaal, and on the outbreak of war decided to continue his residence and his occupation. That he had no *animus revertendi* is evident from his declining the offer of a free passage to Sweden made through his Consul by Lord Kitchener.

Now PHILLIMORE says that: "Every person is to be considered as belonging to that country where he has his domicile, whatever may be his native or adopted country;" and TRAVERS TWISS that: "Every natural-born subject of a neutral Power will have clothed himself with the character of an enemy subject, by long-continued residence, coupled with the intention of remaining in the enemy's territory." Page 603 Page 299.

And MR. JUSTICE STORY lays down—

"Indeed, in the law of nations a person domiciled in a country, and enjoying the protection of its Sovereign, is deemed a subject of that country. He owes allegiance to that country while he resides in it—temporary, indeed, if he has not by birth or naturalization contracted a permanent allegiance —but so fixed that as to all other nations he follows the character of that country in war as well as in peace."

CHANCELLOR KENT, in his Commentaries, says: "National character may be acquired in consideration of the traffic in which a party is concerned. If a person connects himself with a house of trade in an enemy's country in time of war, or continues during war a connection formed in time of peace, he cannot protect himself by having a domicile in a foreign country. He is considered as impressed with a hostile character in reference to so much of his commerce as may be connected with that establishment." Page 299.

The principle is a time-honoured one. GROTIUS, dealing with the same subject of hostile character, says: "There is no doubt that the same principle applies to foreigners who enter hostile territory knowing that war is raging. But those who go there before the war are deemed by the law of nations to be enemies after the lapse of a reasonable interval, within which they might have withdrawn." III, IV, VII.

Now, M. Häggberg was by his own statement domiciled in the Transvaal, pursuing his business

of an amalgamator in the gold-mines, from the produce of which the main revenue of the Boer Government was derived. In so far as the operation of the mines continued after the outbreak of war, those who took part in their exploitation were engaged in supplying the necessities of a belligerent, and, by so doing, furthered his resistance to his adversary. The proceeding was for the immediate benefit of one belligerent, and for the direct disadvantage of the other, not only in a public and national sense, but also to the detriment and loss of the real owners of the mines whose property was thus confiscated.

Page 273. As GEFFKEN says, in a note to his edition of HEFFTER: "If the subject of a friendly Power establishes himself in the country of an enemy and helps him by his undertakings, the other belligerent party cannot be asked to consider such a person as neutral."

Page 311. Again quoting TWISS: "To admit any other conclusion would be equivalent to allowing a belligerent to make war with borrowed weapons, and to preclude his adversary from seizing them and disarming him."

Many occupations which are innocent and legitimate in peace may, when pursued in war, impart an enemy character to those who follow them, and expose them to such treatment as the belligerent thinks proper to impose.

M. Häggberg was in this position. He and many denizens in South Africa of neutral origin appear to have been under the impression that, provided they did not actually take up arms and fight against the British, they were at perfect liberty to pursue any other occupation or calling, however beneficial it may have been to the Boer Government, and however detrimental it might be to the British, and that their neutral origin conferred upon them an immunity from control by the belligerent, and a title to compensation if he interfered with them; in short, an exceptional and privileged position, which has never been recognized in international law, and which, if it were admitted, would render the presence of aliens in other countries in time of war or insurrection a veritable plague, and a source of embarrassment to the Government, as Count Nesselrode expressed the view of the Russian Government in the "Tuscany Claims" case.

The right to hospitality and the toleration accorded to aliens are properly held to be limited by conditions arising from the welfare of the public, the safety of the State, and the exigencies of war.

The presence of a neutral in a theatre of war is always equivocal. It is within his power to withdraw, and if he remains of his own free will the presumption arises that he throws in his lot with the belligerent, and shares the advantages and disadvantages of the subjects of the country.

LORD GRANVILLE, during the Franco-German war, repeatedly laid down that British subjects residing in a country which was a seat of war must not expect Her Majesty's Government to interfere to obtain redress for the losses and inconveniences which war had brought upon them in common with the natives of the country. F.O. Paper, 'Franco-German War No. 4 (1871)."

LORD STANLEY, in the debate on the "Don Pacifico" Claim, declared that Governments were not liable to indemnify foreigners for losses or prejudices arising from *force majeure*.

In the particular case of the war in South Africa, it must be recollected that as the whole able-bodied Boer inhabitants were potential combatants, every foreign subject who could take the place of a burgher in any of the functions or employments which were indispenable even in time of war, by doing so, set free a burgher to take the field and fight against us. This alone would constitute a sufficient reason for the detention or deportation of neutrals domiciled in the country, even if their occupation was of an innocent character. But, if that occupation resulted also in a distinct aid and benefit to the Boer forces, for instance, in working the railways, in manufacturing or repairing munitions of war, in extracting gold from a mine, in coining money in a mint, in guarding prisoners, &c., the justification for detention would *pro tanto* be strengthened by the confirmation of hostile character.

On these grounds, then, it may be contended that M. Häggberg's arrest and detention were justifiable, and that no claim for compensation can be entertained. His claim, moreover, is for indirect and consequential damages, which are inadmissible, according to the precedents of the awards in the cases of Alexandria, the Franco-German war, the "Alabama," &c.

I submit, however, that, as an act of grace, a small sum might be granted without admitting liability.

J. C. ARDAGH,
Major-General.

September 20, 1901.

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Memorandum on the Case of A. W. Haggberg, a Swedish Subject. 4 Oct. 1901. TS Selected Foreign Office Files on Africa. The National Archives (Kew, United Kingdom). Nineteenth Century Collections Online. Web. 29 Apr. 2016.

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